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No. 355

In the Supreme Court of the United States

OCTOBER TERM, 1960

ROBERT M. DIGGS AND CLARA C. DIGGS, PETITIONERS

v.

COMMISSIONER OF INTERNAL REVENUE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

MEMORANDUM FOR THE RESPONDENT

J. LEE RANKIN,
Solicitor General,

CHARLES K. RICE,
Assistant Attorney General,

MEYER ROTHWACKS,
GRANT W. WIPRUD,
Attorneys,
Department of Justice, Washington 25, D.C.

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MEMORANDUM FOR THE RESPONDENT

1. The principal issue in this case is the deductibility under Section 23(b) of the Internal Revenue Code of 1939 of so-called interest payments on annuity contract loans. The same issue is presented in *Knetsch* v. *United States*, No. 23, this Term, tentatively scheduled for argument in October, 1960. It is also presented by the pending petitions in *Emmons* v. *Commissioner*, No. 19, and *Weller* v. *Commissioner*, No. 20. In both *Emmons* and *Weller*, the Government acquiesced to grant of the writ. The Court, however, has held the petitions, apparently in order to await decision in *Knetsch*.* It seems that the same disposition would be appropriate in the instant case.

2. Taxpayers also ask this Court to review the ruling of the Tax Court, affirmed without discussion by the Court of Appeals, that the taxpayers were not

*Taxpayers in *Emmons* and *Weller* have obtained consent to the filing of briefs, *amicus curiae*, in the *Knetsch* case.

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entitled to casualty loss deductions under Section 23(e)(3) of the 1939 Code for breakage of domestic glassware and china. It is evident that no appropriate ground for certiorari exists with respect to this issue. There is no conflict, and the matter is hardly one of substantial importance. Moreover, as pointed out by the Tax Court in its memorandum opinion, there is no warrant for characterizing routine breakage of domestic glassware as a "casualty" within the meaning of the statute, which, by specific reference to fires, storms and shipwrecks, obviously deals with losses inflicted by the forces of nature or other external causes. Indeed, all of the examples given by the taxpayers (Pet. 7–8) of casualty deductions which have been allowed confirm the Tax Court's interpretation of the statute.

CONCLUSION

As to the first issue presented by the petition, the Government does not oppose grant of the writ, but suggests that it would be appropriate to defer action on the petition pending decision in *Knetsch* v. *United States*. As to the second issue, we believe that review should be denied.

Respectfully submitted.

J. LEE RANKIN,
Solicitor General.

CHARLES K. RICE,
Assistant Attorney General.

MEYER ROTHWACKS,
GRANT W. WIPRUD,
Attorneys.

SEPTEMBER 1960.